

UNITED STATES COURT OF APPEALS

DEC 16 1998

TENTH CIRCUIT

PATRICK FISHER
Clerk

KENNEDY DENETCLAW,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 98-2152
(D.C. No. CIV-98-75)
(Dist. New Mex.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **BRORBY**, and **BRISCOE**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9.

Kennedy Denetclaw was convicted of assault with a dangerous weapon, assault resulting in serious bodily injury, and maiming. The conviction was affirmed. *See United States v. Denetclaw*, 96 F.3d 454 (10th Cir. 1996). Relying

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

on a separate concurrence in our opinion in *Denetclaw*, Mr. Denetclaw contends in this action under 28 U.S.C. § 2255 that his Sixth Amendment right to effective assistance of counsel was violated when his attorney in the criminal action did not properly object to the admission of his tribal court guilty plea, which was used to impeach his credibility. The district court held that Mr. Denetclaw's Sixth Amendment rights were not violated, granted a Certificate of Appealability, and denied Mr. Denetclaw's motion to proceed in forma pauperis on appeal. We grant ifp status and affirm.

Mr. Denetclaw's section 2255 petition was referred to a magistrate judge who wrote a careful analysis explaining why Mr. Denetclaw's right to effective assistance of counsel was not violated under the standards set out in *Strickland v. Washington*, 466 U.S. 668 (1984). The district court adopted that analysis. Because we agree substantially with the magistrate judge's Recommended Disposition, we hold that Mr. Denetclaw received effective assistance of counsel in his criminal trial and appeal.

The judgment of the district court denying Mr. Denetclaw's section 2255 petition is **AFFIRMED**.

ENTERED FOR THE COURT

Stephanie K. Seymour
Chief Judge